United States Department of Labor
Employees' Compensation Appeals Board

CHARLES G. JOHNSON, Appellant	)	
and	)	**Docket No. 04-1254**
	)	**Issued: October 28, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Omaha, NE, Employer	)	

Appearances:
Charles G. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 12, 2004 appellant filed a timely appeal from a March 29, 2004 merit decision of the Office of Workers' Compensation Programs, finding that he did not have a ratable hearing loss and would not benefit from hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issues are: (1) whether appellant has a ratable hearing loss; and (2) whether hearing aids should be authorized by the Office.

FACTUAL HISTORY

This case was recently on appeal before the Board. In a February 24, 2004 decision,[1] the Board noted that it had, on a prior appeal, affirmed the Office's finding that appellant had not established that he had a ratable hearing loss. The Board noted that appellant had, since that

[1] Docket No. 03-2176 (issued February 24, 2004).

time, submitted three reports from Board-certified otolaryngologists that were accompanied by audiograms, but that an Office medical adviser did not calculate the percentage of impairment shown by these audiograms. The three audiograms referenced by the Board consisted of October 3, 2000 and April 15, 2002 audiograms by Dr. Britt Thedinger, a Board-certified otolaryngologist and an April 7, 2003 audiogram from Dr. Gary F. Moore, a Board-certified otolaryngologist. The case was remanded to the Office for such calculation. The Board also found that appellant had not established that his tinnitus resulted in a loss of wage-earning capacity.

On March 24, 2004 an Office medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to the three audiograms referred to in the Board's February 24, 2004 decision and concluded that none of them showed a ratable hearing loss.

By decision dated March 29, 2004, the Office found that appellant was not entitled to a schedule award because his hearing loss was not severe enough to be considered ratable and that the weight of the medical evidence established that he would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.[2] The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.[3] For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be a uniform standard applicable to all claimants.[4] The A.M.A., *Guides* has been adopted by the Office[5] and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides* using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The losses at each frequency are added up and averaged and the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The

[2] 5 U.S.C. § 8107.

[3] *Richard Beggs*, 28 ECAB 387 (1977).

[4] *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

[5] FECA Program Memorandum No. 272 (issued February 24, 1986).

[6] *Donald E. Stockstad*, 53 ECAB ___ (Docket No. 01-1570, issued January 23, 2002), *petition for recon., granted* (*modifying prior decision*) (Docket No. 01-1570, issued August 13, 2002); *Danniel C. Goings*, 37 ECAB 781 (1986).

lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[7]

ANALYSIS -- ISSUE 1

An Office medical adviser applied the standards of the A.M.A., *Guides* to the October 3, 2000 and April 15, 2002 audiograms from Dr. Theidinger, a Board-certified otolaryngologist and the April 7, 2003 audiogram from Dr. Moore. For the October 3, 2000 audiogram from Dr. Theidinger, testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps, revealed decibel losses of 5, 5, 5 and 40 respectively. These decibels were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 13.75 decibels. The average of 13.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 5, 10 and 45 respectively. These decibels were totaled at 65 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.

For the April 15, 2002 audiogram from Dr. Theidinger, testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 5, 5 and 40 respectively. These decibels were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 13.75 decibels. The average of 13.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 0, 0, 5 and 55 respectively. These decibels were totaled at 60 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 15 decibels. The average of 15 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.

For the April 7, 2003 audiogram from Dr. Moore, testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 10 and 40 respectively. These decibels were totaled at 75 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 20, 10, 10 and 45 respectively. These decibels were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as required) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.

[7] A.M.A., *Guides* 246-50 (5th ed. 2001).

Review of the Office medical adviser's calculations shows that they were properly done. As none of these audiograms show a ratable loss of hearing, the Board finds that the Office properly denied appellant's claim for a schedule award for hearing loss.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation."[8]

ANALYSIS -- ISSUE 2

Dr. Albert P. Olson, II, the Board-certified otolaryngologist to whom the Office referred appellant for an evaluation of his hearing, stated in a November 5, 1993 report: "With regard to his hearing *per se*, he does not relate to having any problems and from the audiometric tests done, I think he is certainly at a functional level, probably well above that average for his age and is essentially without hearing disability." Although this does not directly address the issue, it does indicate that appellant does not need hearing aids.

Appellant submitted numerous medical reports that addressed his hearing loss: reports from Dr. Peter R. DeMarco, an otolaryngologist, dated December 2, 1992, January 5, 1994, August 10 and November 30 1999 and June 1, 2000; reports dated November 17, 1992, December 7, 1999 and June 26 and October 28, 2002, from Dr. Lee F. McNamara, a family practitioner; reports dated November 3, 2000, April 15 and July 12, 2002 and March 6, 2003 from Dr. Theidinger; and an April 7, 2003 report from Dr. Moore. As none of these reports prescribed or recommended hearing aids, the Office properly refused to authorize hearing aids at its expense.

CONCLUSION

The medical reports and audiograms submitted by appellant since the prior appeal do not show that he has a ratable loss of hearing. The medical evidence does not support that appellant would benefit from hearing aids.

[8] 5 U.S.C. § 8103(a).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member